

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WATER'S EDGE, A  
CONDOMINIUM OWNERS  
ASSOCIATION,

Plaintiff,

V.

AFFILIATED FM INSURANCE  
COMPANY, et al.,

## Defendants.

CASE NO. C19-1553JLR

## ORDER DENYING PLAINTIFF'S MOTION TO REMAND

## I. INTRODUCTION

Before the court is Plaintiff Water's Edge, a Condominium Owners Association's (“Water's Edge”) motion to remand or set a scheduling conference. (Mot. (Dkt. # 17); *see also* Reply (Dkt. # 24).) Defendant Affiliated FM Insurance Company (“AFM”) filed a response to the motion. (Resp. (Dkt. # 22).) Defendant Country Mutual Insurance Company (“CMIC”) (together with AFM, the “Insurers”—who alleges that it was

improperly named as “MiddleOak Specialty” in the complaint (*see* Answer (Dkt. # 14) at 1)—did not respond to Water’s Edge’s motion or join AFM’s response to that motion. (*See generally* Dkt.) The court has considered the parties’ submissions, the relevant portions of the record, and the applicable law.<sup>1</sup> Being fully advised, the court DENIES Water’s Edge’s motion.

## II. BACKGROUND

Water’s Edge is the unit owners’ association for the Water’s Edge Condominium located in Kirkland, Washington (the “Condominium”). (Am. Compl. (Dkt. # 1-2) ¶ 1.) Water’s Edge filed its complaint in King County Superior Court on June 7, 2019 (*see* Verification of Records (Dkt. # 1-3) at 1-4), and then amended its complaint on August 28, 2019 (Am. Compl. at 1-4). Water’s Edge alleges that it “[r]ecently” became aware of water-intrusion damage at the Condominium that Water’s Edge believes is covered by insurance policies provided to Water’s Edge by the Insurers. (*See id.* ¶¶ 7-8, 12-13.) On June 7, 2019, the same date that Water’s Edge filed its initial complaint, Water’s Edge notified the Insurers in writing of the losses at the Condominium and of its claim for insurance coverage and benefits. (*See id.* ¶ 10.) Water’s Edge seeks declaratory relief from this court stating that Water’s Edge is entitled to coverage for the damage suffered at the Condominium. (*See id.* ¶¶ 12-13.)

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<sup>1</sup> No party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court has determined that oral argument would not be of assistance in deciding the motions, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1       With CMIC’s consent, AFM removed this case from King County Superior Court  
2 to this court on September 27, 2019. (*See* Not. of Removal (Dkt. # 1).) AFM removed  
3 on the basis of diversity jurisdiction under 28 U.S.C. § 1332(a). (*See id.* ¶ 6.) AFM  
4 alleges that Water’s Edge is a citizen of Washington, AFM is a citizen of Rhode Island,  
5 and CMIC is a citizen of Connecticut for purposes of diversity jurisdiction. (*See id.* ¶ 7.)  
6 Although the complaint is silent on the amount in controversy (*see generally* Am.  
7 Compl.), AFM claims that it has conducted a preliminary investigation into Water’s  
8 Edge’s claim and determined that more than \$75,000 is in controversy (*see* Not. of  
9 Removal ¶ 8). Specifically, AFM alleges that the insurance policies at issue provide  
10 between \$31,070,000 and \$37,290,000 in maximum coverage limits; that the  
11 Condominium where the water damage occurred includes 13 individual units that range  
12 in value from \$4,721,000 to \$5,538,000; and that Water’s Edge commissioned a report  
13 that indicated that the water-damage at issue “exists at some, if not all[,] of the window  
14 installations” at the Condominium. (*See id.* ¶¶ 7(a)-(g); *see also* Webber Decl. (Dkt. # 2)  
15 ¶ 3, Ex. B (Water’s Edge’s investigation report); Sekits Decl. (Dkt. # 3) ¶¶ 2-3, Exs. A-B  
16 (insurance policy declaration pages); *id.* ¶ 4, Ex. C (property values).) Based on this  
17 information, AFM concluded that if coverage is awarded in this case, the cost to repair  
18 the damage will exceed \$75,000. (*See* Not. of Removal ¶ 7(g); Webber Decl. ¶ 4.)

19       The Insurers were not notified of Water’s Edge’s claim until June 7, 2019—the  
20 date that Water’s Edge filed its original complaint—and have not yet completed their  
21 investigation into Water’s Edge’s insurance claim or issued a final coverage  
22 determination. (*See* Am. Compl. ¶ 10; Miller Decl. (Dkt. # 18) ¶ 9.) Water’s Edge

1 claims that it filed this lawsuit before the Insurers had a chance to investigate the  
2 insurance claim “out of an abundance of caution” due to concerns that the Insurers would  
3 argue that the claim was time-barred if Water’s Edge did not file it immediately. (See  
4 Mot. at 1; Am. Compl. ¶ 11.) Water’s Edge attempted to negotiate a tolling agreement  
5 with the Insurers to resolve concerns about the timeliness of Water’s Edge’s claim, but  
6 the parties were unable to reach agreement. (See Miller Decl. ¶¶ 5-6, Exs. C-D.)

7 **III. ANALYSIS**

8 Water’s Edge argues that this case should be remanded because AFM failed to  
9 satisfy its burden to establish that there is at least \$75,000 in controversy. (See Mot. at  
10 3.) In the alternative, Water’s Edge requests a scheduling conference so that the court  
11 and the parties can “discuss how best to plan out this case.” (*Id.* at 11.) AFM rejects  
12 Water’s Edge’s amount in controversy argument, but argues that if the court agrees with  
13 Water’s Edge that the court cannot yet determine “if anything” is in dispute between the  
14 parties, then this case is not yet ripe for adjudication and should be dismissed. (See Resp.  
15 at 2-3.) Thus, the parties’ briefing presents questions regarding diversity jurisdiction and  
16 the constitutional justiciability of this dispute. The court addresses the applicable legal  
17 standards before considering the parties’ arguments.

18 **A. Legal Standards**

19 1. Amount in Controversy

20 “Jurisdiction founded on 28 U.S.C. § 1332 requires that the parties be in complete  
21 diversity and the amount in controversy exceed \$75,000.” *Matheson v. Progressive*  
22 *Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). “Where it is not facially evident

1 from the complaint that more than \$75,000 is in controversy, the removing party must  
2 prove, by a preponderance of the evidence, that the amount in controversy meets the  
3 jurisdictional threshold.” *Id.*; *see also* 28 U.S.C. § 1446(c)(2). In determining whether  
4 jurisdiction has been established, courts may consider facts “presented in the removal  
5 petition as well as ‘any summary-judgment-type evidence relevant to the amount in  
6 controversy at the time of removal.’” *Matheson*, 319 F.3d at 1090 (quoting *Singer v.*  
7 *State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).

8           2.     Justiciability

9           The concept of justiciability “expresses the jurisdictional limitations imposed upon  
10 federal courts by the ‘case or controversy’ requirement” of Article III of the United States  
11 Constitution. *See Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) (citation  
12 omitted); U.S. Const., art. III, § 2. Justiciability is a threshold matter that courts have an  
13 independent obligation to evaluate, *sua sponte*, if necessary, before reaching the merits of  
14 a case. *See, e.g., Am. Civil Liberties Union of Nev. v. Lomax*, 471 F.3d 1010, 1015 (9th  
15 Cir. 2006); *see also Toumajian v. Frailey*, 135 F. 3d 648, 652 (9th Cir. 1998) (“In this  
16 action, as in all actions before a federal court, the necessary and constitutional predicate  
17 for any decision is a determination that the court has jurisdiction—that is[,] the power—  
18 to adjudicate the dispute.”).

19           In relevant part, the Declaratory Judgment Act provides that, “[i]n a case of actual  
20 controversy within its jurisdiction, . . . any court of the United States . . . may declare the  
21 rights and other legal relations of any interested party seeking such declaration, whether  
22 or not further relief is or could be sought.” 28 U.S.C. § 2201(a). The phrase “case of

1    “actual controversy” refers to the types of cases and controversies that are justiciable  
2    under Article III of the Constitution. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S.  
3    118, 126-27 (2007). An actual controversy exists within the meaning of the Declaratory  
4    Judgment Act when the dispute is “definite and concrete, touching the legal relations of  
5    parties having adverse legal interests.” *Id.* at 127 (quoting *Aetna Life Ins. Co. v.*  
6    *Haworth*, 300 U.S. 227, 240-41 (1937)). Further, the dispute must be “real and  
7    substantial and admit of specific relief through a decree of a conclusive character, as  
8    distinguished from an opinion advising what the law would be upon a hypothetical set of  
9    facts.” *Id.* (internal quotation marks omitted).

10    **B.    The Motion to Remand**

11       1.    Amount in Controversy

12       The court rejects Water’s Edge’s argument that AFM failed to carry its removal  
13    burden because AFM did not show that more than \$75,000 is in controversy in this  
14    dispute. (See Mot. at 8-10.) AFM submitted sufficient evidence in its removal papers to  
15    carry its removal burden. AFM alleges that the insurance policies at issue provide  
16    between \$31,070,000 and \$37,290,000 in maximum coverage limits; that the  
17    Condominium where the water damage occurred includes 13 individual units that range  
18    in value from \$4,721,000 to \$5,538,000; and that Water’s Edge commissioned a report  
19    that indicated that the water-damage at issue “exists at some, if not all[,] of the window  
20    installations” at the Condominium. (See Not. of Removal ¶¶ 7(a)-(g); *see also* Webber  
21    Decl. ¶ 3, Ex. B (Water’s Edge’s investigation report); Sekits Decl. ¶¶ 2-3, Exs. A-B  
22    (insurance policy declaration pages); *id.* ¶ 4, Ex. C (property values).) Based on this

1 information, AFM and its adjuster concluded that the cost to repair the damage to the  
2 Condominium will exceed \$75,000. (See Not. of Removal ¶ 7(g); Webber Decl. ¶ 4.)  
3 Water's Edge appears to agree. Water's Edge concedes in its motion that it is  
4 "conceivable" or "perhaps even likely" that the claims in this case will "far exceed the  
5 \$75,000 threshold" if there is a live dispute between the parties. (See Mot. at 3.)

6 Thus, if there is a ripe dispute between the Insurers and Water's Edge, the court  
7 concludes that the amount in controversy requirement for diversity jurisdiction is  
8 satisfied. As such, the court DENIES Water's Edge's motion to remand.

9 2. Justiciability

10 Although Water's Edge styles its motion as a dispute over the amount in  
11 controversy and claims that it has not challenged the justiciability of its own complaint  
12 (*see* Mot. at 8-10; Reply at 5-7), the court agrees with AFM that Water's Edge's motion  
13 raises justiciability concerns that the court must address, (*see* Resp. at 2-3). Water's  
14 Edge argues that, "[a]s of now . . . there is no money in controversy . . . because the  
15 insurers are still in the process of investigating and adjusting [Water's Edge's] insurance  
16 claim." (Mot. at 3 (emphasis omitted).) Water's Edge further argues that "[u]nless and  
17 until" the Insurers finish processing Water's Edge's claim, "it is impossible to know what  
18 amount, if anything, is in controversy between the parties." (*See id.*) The qualifications  
19 that Water's Edge places on its arguments such as "as of now" and "unless and until"  
20 make clear that Water's Edge has presented a ripeness argument—whether it intended to  
21 or not. Despite the phrasing of its motion, the issue Water's Edge's motion identifies is  
22 not whether there is \$75,000 in controversy; rather, the key issue is whether this case

1 presents any dispute at all at this time given that the Insurers have yet to make a coverage  
2 determination. (*See id.* at 8 “[Water’s Edge] does not dispute that the ultimate amount of  
3 this loss will likely exceed \$75,000. As such, to the extent [the Insurers] deny coverage  
4 for this loss and there is then a future controversy over the coverage owed by [the  
5 Insurers] as to this loss, this jurisdictional requirement will be met at that time.”). That  
6 argument squarely raises ripeness concerns that the court is obligated to address and  
7 resolve. *See Am. Civil Liberties Union of Nev.*, 471 F.3d at 1015 (noting that  
8 justiciability is a threshold matter that courts have an independent obligation to evaluate).

9         Although the court agrees with AFM that Water’s Edge identified justiciability  
10 concerns with its own lawsuit, the court disagrees with AFM’s argument that this case  
11 should be dismissed on ripeness grounds. (*See Resp.* at 9-12.) On June 7, 2019, Water’s  
12 Edge notified the Insurers in writing of the losses at the Condominium and of its claim  
13 for insurance coverage and benefits. (*See Am. Compl.* ¶ 10.) In this lawsuit, Water’s  
14 Edge seeks declaratory relief stating that the Insurers owe coverage for the water damage  
15 suffered at the Condominium. (*See id.* at 12-13.) In other words, Water’s Edge has  
16 demanded payment from the Insurers and seeks a court ruling declaring that its demand is  
17 valid. Even though the Insurers are still investigating Water’s Edge’s claim, the  
18 underlying demand for payment presents a “definite and concrete” dispute that “touch[es]  
19 the legal relations of parties having adverse legal interests.” *See MedImmune, Inc.*, 549  
20 U.S. at 127 (quoting *Aetna Life Ins. Co.*, 300 U.S. at 240-41); *see also Mainhouse*  
21 *Homeowners Ass’n v. Allstate Ins. Co.*, No. C16-1457-JCC, 2017 WL 58840, at \*3 (W.D.  
22 Wash. Jan. 5, 2017) (rejecting a ripeness argument and finding that insurance coverage

1 dispute was “fit for adjudication” even though the insurer was “continu[ing] to  
2 investigate the claim”); *Triyar Cos., LLC v. Lexington Ins. Co.*, No. 3:12-CV-294, 2013  
3 WL 3280033, at \*3 (S.D. Tex. June 27, 2013) (“Declaratory judgment actions are often  
4 used to determine whether insurance coverage exists for damage caused by a past event,  
5 even in cases in which the plaintiff’s damages have not yet been determined.” (collecting  
6 cases)). Thus, this lawsuit presents a ripe case or controversy under Article III.

7 To the extent that the ripeness doctrine also requires that the court address  
8 “prudential reasons for refusing to exercise jurisdiction,” *Nat’l Park Hosp. Ass’n v. Dep’t*  
9 *of Interior*, 538 U.S. 803, 808 (2003) (internal quotations omitted); the court concludes  
10 that the prudential ripeness doctrine favors exercising jurisdiction.<sup>2</sup> To evaluate  
11 prudential ripeness, courts weigh two factors: “the fitness of the issues for judicial  
12 decision and the hardship to the parties of withholding court consideration.” *Abbott*  
13 *Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *overruled on other grounds by Califano v.*  
14 *Sanders*, 430 U.S. 99 (1977). “A claim is fit for decision if the issues raised are primarily  
15 legal, do not require further factual development, and the challenged action is final.”  
16 *Wolfson v. Brammer*, 616 F.3d 1045, 1060 (9th Cir. 2010). “To meet the hardship

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19 <sup>2</sup> The United States Supreme Court has recently called the prudential ripeness doctrine  
20 into question. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (“To the extent  
21 respondents would have us deem petitioners’ claims nonjusticiable on grounds that are  
22 prudential, rather than constitutional, that request is in some tension with our recent reaffirmation  
of the principle that a federal court’s obligation to hear and decide cases within its jurisdiction is  
virtually unflagging.” (citations and internal quotations omitted)). However, because neither the  
Supreme Court nor the Ninth Circuit have definitively invalidated this doctrine, the court  
considers it here.

1 requirement, a litigant must show that withholding review would result in direct and  
2 immediate hardship[.]” *Id.* (citations and internal quotations omitted).

3 The prudential requirements favor exercising jurisdiction here. First, this dispute  
4 is fit for decision. Because the water damage at the condominium has already occurred  
5 and Water’s Edge has filed its insurance claim, this case needs no “further factual  
6 development” and the issue presented is “purely legal.” *See id.* Either the Insurers owe  
7 coverage under the policy or they do not. Second, the court concludes that the hardship  
8 requirement weighs in favor of exercising jurisdiction. Water’s Edge argues that it could  
9 suffer hardship in the form of statute of limitations issues if this court were to dismiss this  
10 case on ripeness grounds as AFM requests. (*See* Am. Compl. ¶ 11; Mot. at 2-5 (noting  
11 that Water’s Edge filed this lawsuit due to concerns that the Insurers would not enter into  
12 tolling agreements); Reply at 6-7 (arguing that “AFM’s rejection of the tolling agreement  
13 put the Association in an impossible situation” and forced Water’s Edge to file suit). The  
14 parties have not fully briefed the limitations issues (*see generally* Mot. at 2-5; Resp. at 8  
15 n.1; Reply at 6-7), so the court will not weigh in on the merits of that issue. Instead, the  
16 court concludes that the parties’ inability to enter a tolling agreement combined with  
17 “potential concerns about the statute of limitations” are enough to conclude that hardship  
18 factor weighs in favor of exercising jurisdiction to hear this case. *Mainhouse*, 2017 WL  
19 58840, at \*3 (“[C]oncerns about the statute of limitations in this case lead the Court to  
20 conclude that Plaintiff would suffer hardship if the Court declines to hear the case,  
21 especially since the parties’ past attempt to establish a tolling agreement failed.”); *Triyar*,  
22 2013 WL 3280033, at \*3 (“Although it is not obvious to this Court that limitations would

1 apply . . . , to the extent that there is a possibility that limitations could bar Triyar's  
2 claims in a future suit, that possibility also favors a finding of ripeness."').

3 Because this case presents a ripe case or controversy and the prudential ripeness  
4 requirements favor exercising jurisdiction, the court concludes that Water's Edge's  
5 request for declaratory relief is ripe for review.

6 **C. Water's Edge's Request for a Scheduling Conference**

7 The court DENIES Water's Edge's alternative request for a scheduling conference  
8 "to discuss how best to plan out this case." (Mot. at 11.) The court's typical procedures  
9 will suffice to plan and structure this case. In addition, the court has already granted the  
10 parties multiple extensions on their deadline for the Federal Rule of Civil Procedure 26(f)  
11 conference and their deadlines to submit initial disclosures, a joint status report, and a  
12 discovery plan. (See Sched. Order (Dkt. # 19); 10/25/19 Order (Dkt. # 21); 11/21/19  
13 Order (Dkt. # 25); 12/30/19 Order (Dkt. # 29).) This case does not merit additional  
14 extensions or deviations from the court's case schedule.

15 **IV. CONCLUSION**

16 For the reasons set forth above, Water's Edge's motion to remand or set a  
17 scheduling conference (Dkt. # 17) is DENIED. Additionally, the court concludes that  
18 Water's Edge's request for declaratory relief is ripe for review.

19 Dated this 8th day of January, 2020.

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JAMES L. ROBART  
United States District Judge